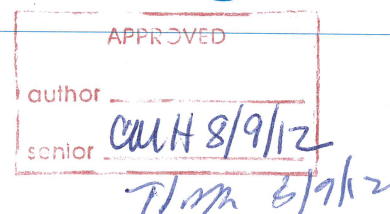


Central Valley Regional Water Quality Control Board

10 August 2012

Henry J. Tosta (dba Henry Tosta Dairy)
and Henry J. Tosta Trust
20662 San Jose Road
Tracy, CA 95304



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STATUS OF COMPLIANCE WITH CLEANUP AND ABATEMENT ORDER R5-2012-0708, HENRY TOSTA DAIRY, 20662 SAN JOSE ROAD, TRACY, SAN JOAQUIN COUNTY

On 11 June 2012 the Central Valley Regional Water Quality Control Board (Central Valley Water Board) issued Cleanup and Abatement Order (CAO) R5-2012-0708 to Henry J. Tosta and Henry J. Tosta Trust (Henry J. Tosta, trustee), owner and operator of the Henry Tosta Dairy (hereafter collectively referred to as "Discharger").

The CAO contained several Directives that required specific cleanup actions to be completed and reported to the Central Valley Water Board. Water Board staff have reviewed the information submitted on behalf of the Discharger by the Discharger's consultant, Western Dairy Design, including the letter dated 26 July 2012 (received 3 August 2012), and the results of Water Board staff's site inspections on 3, 12, 17, and 26 July 2012. This letter provides notification to the Discharger that as of the date of this letter, the following directive in the CAO remains incomplete. The Central Valley Water Board's Executive Officer may refer the matter to the state Attorney General for judicial enforcement, or may issue a complaint for penalties in an amount not to exceed **\$5,000 per day** for each day in which the Discharger remains out of compliance.

Incomplete Response to CAO Directive 1

Directive 1 of the CAO requires the development of a plan for the Production Area that addresses removal of manure in the settling basins and the 3 to 4 acre central area, and cleanup of the six wastewater lagoons. This plan was due to the Central Valley Water Board by 25 June 2012. On 5 July 2012, 10 days late, Water Board staff received a three page report from Western Dairy Design that described in general terms that the settling basins would be "skimmed" rather than cleaned, that the manure in the central area would be "removed as soon as possible", and that the lagoons would be cleaned. The report provided 5 July 2012 does not satisfy Directive 1 of the CAO. The submitted report is deemed an incomplete submission for the following reasons. No destination for the removed manure and wastewater was indicated, other than "[t]he plan is to land apply the manure after the crop harvesting process which may be from 20 September to 20 October 2012. Dairy Monitoring Company will be asked to test the

manure and provide agronomic applications to each field as part of their normal reporting program."

The submission does not contain a specific schedule for the cleanup of manure from each of the areas identified in the CAO. The report does not include an estimate of the total volume of manure to be removed from each of the areas listed in Directive 1. It does not contain a realistic plan for the use of the manure once it is removed from the production area, as the cropland associated with the dairy is insufficient to use all of the manure to be removed if agronomic application rates are to be maintained. Documentation of the amount of manure removed and of its destination, including manifests for manure shipped offsite, are required as part of the remediation process. Staff inspections during July 2012 have documented the lack of systematic progress in the removal of the manure and cleanup of the production area.

As of 10 August 2012 compliance with this directive is now 45 days late. The Discharger may be subject to maximum administrative civil liability of up to **\$225,000** for failure to comply with this directive of the CAO.

Response to 26 July 2012 Letter

Central Valley Water Board staff has reviewed the information provided in the 26 July 2012 letter describing the status of compliance with the Directives in the CAO and with the Remediation Items listed in the 8 May 2012 report of the Water Board staff inspection done on 1 May 2012. Refer to Enclosure 1 for a response to each of the points in the letter.

Requests in 26 July 2012 Letter for Extensions to CAO Deadlines

The 26 July 2012 letter includes six requests for extension from the deadlines in the CAO. None of the requests provide a reason that the extension is needed.

The first request (Attachment #3 to the 26 July 2012 letter) appears to be requesting an extension for the submittal of a plan for the removal of manure in the production area, since it references the original due date of 25 June 2012 for the plan's submittal. As described above under "Incomplete Response to CAO Directive 1", a complete plan containing a specific schedule, an estimate of the volume of manure to be removed, and a realistic use for the removed manure, among other elements, is needed to ensure a timely and successful remediation of the production area. Delaying submittal of this report until 15 October 2012 will not allow removal of manure prior to the rainy season; this request is denied.

The second request (Attachment #4 to the 26 July 2012 letter) cites the deadline for beginning of manure removal operations, but then goes on to request an extension of the deadline for completion of the manure removal operations. Staff assumes that this request is for an extension of the manure removal deadlines. Extending the manure removal completion deadlines to 15 October 2012 from the current deadlines of 27 August 2012 and 27 September 2012 creates a risk that the cleanup will not be completed prior to the start of the rainy season. In addition, there has been no discernable progress as of the date of the most recent Water Board staff inspection on 26 July 2012 in cleanup of the 3 to 4 acre area. This area is outside

the settling basin/lagoon system, has no controls or constructed features to manage liquids, and in fact is still being used on a daily basis as the dumping area for manure scraped from the ongoing dairy operation. Given the continued lack of waste management of this area, Water Board staff is concerned that granting an extension would likely further delay the manure cleanup such that it would not be completed before the start of the rainy season. The extension request is denied.

The third extension request (Attachment 6 to the 26 July 2012 letter) is for repairs to Well #1. A Water Board staff inspection on 3 July 2012 found that this work had been completed. The need for the extension is not clear and no explanation has been provided. Until this extension request is clarified, the extension request is denied.

The fourth extension request (Attachment 7 to the 26 July 2012 letter) is for sampling and submission of data for three monitoring wells. The request asks for an additional 10 days, until 3 August 2012, to submit the results. The results, except for depth to water, were submitted to Water Board staff on 20 July 2012. The depth to water results were submitted as part of the 26 July 2012 letter, but the elevation of the monitoring points have not been provided, so water level maps cannot be prepared at this time, and no date for the surveying of the monitoring point elevations has been given. The need for the extension is not clear and no explanation has been provided. Until this request is clarified, the extension request is denied.

The fifth extension request (Attachment 8 to the 26 July 2012 letter) is for collection and analysis of hydropunch samples from the 3-4 acre area. The samples cannot be collected until the manure in this area is removed but, as indicated above, the deadline for removal of the manure in the 3-4 acre area is not being extended. Consequently, the samples should be taken by the original deadline in the CAO and this extension request is denied.

The sixth and final extension request (Attachment 9 to the 26 July 2012 letter) is for submission of a remediation plan for groundwater. The need for the extension is not clear and no explanation has been provided. Until this request is clarified, the extension request is denied.

Reminder of Upcoming Deadlines

This is a reminder of the upcoming dates of compliance in the CAO.

- a. Directive 4 requires the collection of samples from the three groundwater monitoring wells at the Henry Tosta Dairy. The sampling results were due to the Central Valley Water Board by 23 July 2012, and we received the results electronically on 20 July 2012. Our brief review of the well data indicates that the uppermost groundwater underneath the production area has been negatively impacted by waste management practices at the dairy. Therefore, by 27 September 2012, as described in Directive 7, you are required to submit a plan for the remediation of the groundwater underneath the production area, an engineering evaluation of the impacts of the existing lagoons and settling basins on groundwater quality, and a proposal for remedial measures.

10 August 2012

- b. A revised Waste Management Plan, due 27 August 2012 per Directive 6 of the CAO, should also be prepared with the understanding that present manure and wastewater management practices have caused pollution of groundwater under the production area and must be modified to prevent such problems in the future.

If you have any questions regarding compliance with the CAO please contact Charlene Herbst at (916) 464-4724 or cherbst@waterboards.ca.gov.



Frederick S. Moss
Assistant Executive Officer

Enclosure 1

cc: David Boyers, State Water Board, Office of Enforcement, Sacramento
Ellen Howard, State Water Board, Office of Enforcement, Sacramento
Rodney Estrada, Lead Senior REHS, San Joaquin County Environmental Health
Department
David Irey, Supervising Deputy District Attorney, San Joaquin County
Jim Avila, Dairy Monitoring Company
David Avila, Western Dairy Design

Response to 26 July 2012 Reply to Cleanup and Abatement Order R5-2012-0708

Directive 1a - Removal of slurry manure in the 3-4 acre area in production area /
Remedy: Tractors can't remove manure – manure will be removed by 15 October 2012.

As of the most recent Water Board staff inspection on 7/26/12, fresh manure was still being scraped into the 3-4 acre area, and was not being managed through the existing settling basin/lagoon system. Manure generated from the ongoing dairy operation should not be placed in the 3-4 acre area; continuing to use this area for manure disposal is contrary to Directive 1a in the Cleanup and Abatement Order.

The "remediation plan" received 7/5/12 does not contain a specific schedule or description of procedures to address the removal of the manure in the 3-4 acre area. Staff expected a remediation plan that either (1) describes preparing an area (compacting, grading, containing) where the slurry manure can be windrowed and dried; or (2) describes how the manure will be prepared in-situ for application to cropland and/or export.

The proposed completion date of 10/15/12 is too late; the manure must be removed long before the first rain. If rains come early, or if there is even one significant storm in early October, heavy equipment will not be able to access the area, and the 3-4 acre area in question will be too wet for removal operations until the summer of 2013.

Directive 1b - Removal of all manure within the two settling basins /
Remedy: Done

This is not done; significant solid manure, slurry manure, and liquid wastewater still remain in both settling basins. See Attachment #1 in the report – the photos clearly show manure in both basins.

Directive 1c - Removal of excess vegetation, manure, and manure used for
construction on the six lagoons, install staff gauges /
Remedy: Weeds and manure have been removed and piled within the lagoons. They will be hauled away shortly. Staff gauges will be installed by 15 October 2012.

Staff agrees that the weeds have been removed. The manure has not been *removed* – it has been moved / windrowed. Regarding the manure piles in the lagoons, stating that "these will be hauled away shortly," is not adequate; a solid deadline for removal should have been part of the remediation plan.

Directive 1 (general) – "Removal of manure must commence by 2 July 2012." /
Remedy: Will be done by 15 October 2012. See Attachment #4 (extension request).

Removal of manure did not commence by 7/2/12, as documented by Water Board staff's 7/3/12 inspection. At the time of the 7/3/12 inspection, staff was informed that removal would begin either 7/12/12 or 7/13/12. When Water Board staff inspected the Dairy on 7/12/12, movement of manure by an excavator was underway at Settling Basin #1 and Lagoons #3, 4, and 5.

Directive 2 – Permanently cap pipe that extended from Settling Basin 1 / Remedy: Pipe has been removed.

The Naglee Burk Irrigation District has confirmed by email dated 7/5/12 from Robert Mehlhaff to Ellen Howard of the Office of Enforcement that the pipe has been removed.

Directive 3 - Install concrete pad around Well #1 and install controls to ensure a minimum of 100 feet of separation..../ Remedy: Pad in place, re measured distance – more than 100' from manure source

Water Board staff has confirmed the concrete well-pad is in place. Work was done by the CAO deadline of 6/29/12.

Directive 4 - Locate and sample 3 Monitoring Wells / Remedy: Find enclosed results

The laboratory results were submitted to Water Board staff electronically on 7/20/12; a hard copy of the results is part of the 7/26/12 package received by Water Board staff on 8/3/12. The depth to water was provided in the 7/26/12 package, but not the surveyed elevation of the reference point from which the depth to water was measured. Without the elevation of the reference point, it is not possible to determine the groundwater flow direction and gradient. On Attachment #7, page 10 or 10, there is an acknowledgement that a resurvey is necessary to determine this elevation so that the groundwater flow direction and gradient can be determined. A date for the resurvey has not been provided.

Directive 5 - Hydropunch / Remedy: Requesting extension via Attachment #8 to October 15, 2012

See cover letter for comment.

Directive 6 - Submit revised and accurate WMP / Remedy: Pending

Deadline of 8/27/12 not yet reached.

Directive 7 - Plan for remediation of groundwater / Remedy: Requesting and extension via Attachment #9 to November 15, 2012.

See cover letter for comment.

Response to Remediation Items identified in 8 May 2012 Inspection Report, Page 3

The following items, although identified in the 5/8/12 report of the inspection conducted by Water Board staff on 5/1/12, were not assigned deadlines in the Cleanup and Abatement Order. The responses follow the order of the discussion in the 7/26/12 document provided by the Discharger; some of the items in the 5/8/12 inspection report were not included in the 7/26/12 document.

3. Remove all manure and feed from channel near silage pit / Remedy: Done by 15 October 2012

This is a simple job that could be completed in less than a day, by staff's estimation. At present, leachate that enters this channel is blocked by manure and feed, and flows into either a corral or the 3-4 acre area of manure slurry. Cleaning out this channel is an important part of determining where the leachate flows when the channel is restored to its original design. Modifications of the channel, if needed, should be part of the revised Waste Management Plan which is due 8/27/12 per the Cleanup and Abatement Order. Therefore, this cleanup should be done in time to allow any needed changes to be incorporated into the Waste Management Plan.

4. Remove all weeds from Settling Basins 1 and 2 and Lagoons 1-5 / Remedy: See Attachment #1 and #2

Water Board staff agree that weeds have been removed.

5. Install staff gauges in Settling Basins 1 and 2 and Lagoons 1-5 / Remedy: Done by 15 October

Cleanup and Abatement Order Directive 1c requires installation by 9/27/12 so that gauges are installed before the rainy season begins.

6. Reconstruct Settling Basin 2 eastern embankment / Remedy: Done

As of the most recent inspection on 7/26/12, Water Board staff did not observe a reconstructed eastern embankment at Settling Basin 2.

8. Remove all wastewater, solid manure, slurry manure from the area located west of the wastewater storage ...All manure should be exported off-site....Ground water samples should be obtained.... Remedy: Done by 15 October 2012

This refers to the area identified in the Cleanup and Abatement Order as the "3-4 acre area". Refer to comments on Directive 1a on page 1 of this document.

7. a. Clean up corral in northeast corner of production area / Remedy: Done by 15 October 2012 and 7.b. Grading to prevent ponding / Remedy: All corrals have fly ash to prevent ponding. If ponding does occur water is pumped out into the lagoon

All corral work, such as manure removal and grading to prevent ponding needs to be complete prior to the start of the rainy season. The 10/15/12 date offered by the Discharger is too late in the fall, and does not account for an early winter or a single early heavy rain event. Work should be completed before the end of September 2012.

Fly ash in the corral does not substitute for grading of corrals. Fly ash will reduce the permeability of the soil, but fly ash alone does not direct water to an appropriate location where it can be moved to the settling basin/lagoon system. Grading is required to prevent ponding.

8. Removal of all manure from Settling Basins 1 and 2. Exported and documentation provided / Remedy: Removal of manure was completed 7/12/2012, Exporting will be done by 15 Oct 2012, and docs will be done by 15 Oct 2012

As of Water Board staff's inspection of 7/26/12, removal of manure from Settling Basin #1 was not complete. Manure from Settling Basin #2 appears to have been dumped into Lagoon #2. Photographs provided as Attachment #1 to the 7/26/12 report do not support the statement of the Discharger that removal of manure has been completed.